IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

W.A.No.1772 of 2004

N.Kunnai Gowder .. Appellant

Vs

1. The Coimbatore District
   Co-op. Milk Producers' Union Ltd.
   Pachapalayam, Perur Via
   Coimbatore - 10
   rep. by its Managing Director.

2. The Enquiry Officer
   Domestic Enquiry
   The Coimbatore District
   Co-op. Milk Producers' Union Ltd.
   Pachapalayam, Perur Via
   Coimbatore - 10 .. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 25.2.2004 made in W.P.No.3965 of 2004.

This Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the concerned records relating to the charge memo dated 26.9.1997 passed bu the Ist respondent and quash the same.

For Appellant : No appearance
For Respondents : Mr.P.Narayanamoorthy
for 1st respondent

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J U D G M E N T

P.D.DINAKARAN,J

This appeal arises out of the order of the learned Single Judge dated 25.2.2004 made in W.P.No.3965 of 2004 dismissing the writ petition filed by the appellant herein seeking issue of a writ of Certiorari to call for the records relating to the charge memo dated 26.9.1997 passed by the first respondent and to quash the same.

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2.1. A vignette of the facts is suffice. The appellant was working as Assistant Manager (Industrial Relations) in the first respondent/Co-operative Society. On 26.9.1997, the first respondent issued a charge memo to the appellant alleging that he had regularised the services of casual workers in anticipation of Board's approval. On 29.10.1997, the appellant submitted his explanation denying the allegations levelled against him. The first respondent, thereafter, issued an advance intimation notice on 4.11.1997 stating that the appellant is to retire on account of superannuation on the afternoon of 9.1.1998. Subsequently, the first respondent, by proceedings dated 9.1.1998, permitted the appellant to retire from the services of the first respondent on 9.1.1998, of course, on condition that the appellant should give an undertaking letter in stamp paper to make good loss, if any, sustained by the first respondent due to the negligence committed by the appellant during his tenure of service.

2.2. There was no headway in the matter and the first respondent maintained complete silence for over five and half years since the retirement of the appellant, viz., till 29.8.2003, on which date a show cause notice was issued by the first respondent requiring the appellant to show cause as to why suitable action should not be initiated under the provisions of the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder for recovering the loss accrued by the first respondent, due to the violation committed by the appellant in regularising casual labourers without approval of the Board. The appellant submitted his explanation on 6.9.2003, denying the allegations levelled against him and sought the first respondent to withdraw the notice dated 29.8.2003.

2.3. Unconvinced by the explanation dated 6.9.2003 of the appellant, the first respondent issued another show cause notice on 10.9.2003 stating that the first respondent sustained heavy loss to the tune of Rs.7,92,000/- and required the appellant to submit his explanation within 7 days, failing which it was proposed to recover the loss as per the provisions of the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder. The appellant, by explanation dated 15.9.2003, reiterated the averments made in his earlier explanation dated 6.9.2003 and requested to drop initiation of any further proceedings.

2.4. Be that be, second respondent, issued an enquiry notice dated 30.1.2004, stating that he had been appointed as an enquiry officer to enquire into the charges levelled against the appellant in the charge memo dated 29.6.1997, and required the petitioner to attend the enquiry scheduled on 7.2.2004 at 3.00 p.m.

2.5. Alleging that the first respondent had initiated domestic enquiry after his retirement on 9.1.1998, for the alleged commission of irregularity said to have been committed on 15.12.1994, after lapse of more than 9 years, which is contrary to the provisions of law, the appellant preferred writ petition in W.P.No.3965 of 2004 seeking issue of a writ of Certiorari to call for the records relating to the charge memo dated 26.9.1997 passed by the first respondent and to quash the same.

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2.6. The learned Single Judge, by order dated 25.2.2004 made in W.P.No.3965 of 2004, observing that the order impugned is only a charge memo, required the appellant to submit his explanation and dismissed the writ petition. Hence, this writ appeal.

3. There is no representation on behalf of the appellant. We leafed through the grounds of appeal. We find that the main ground, aid of which is sought for by the appellant, is that the first respondent, having permitted the appellant to retire on his attainment of age of superannuation on 9.1.1998, has no power under law to proceed against him, and therefore, permitting the appellant to retire, but without prejudice to the right of the first respondent to proceed with the disciplinary proceedings initiated pursuant to the charge memo is ilegal and without jurisdiction.

4. Mr.P.Narayanamoorthy, learned counsel for the first respondent is not in a position to support the stand taken by the first respondent by any statutory provision, insofar as permission was granted to the appellant to retire, without prejudice to the right of the first respondent to proceed with the disciplinary proceedings.

5. We scanned the materials placed before us in the light of the grounds of grievance and the contentions raised.

6. A departmental proceeding can continue so long as the employee is in service. In the event, a disciplinary proceeding is kept pending by the employer, the employee cannot be made to retire. In the instant case, no rule has been brought to our notice providing for continuation of such proceeding despite permitting the employee concerned to retire. There has to be a specific provision of law or regulation or a by-law governing the service conditions of the person in question for continuing a departmental enquiry, initiated before the date of superannuation, even after the employee had retired from service. Without such a provision being available, there cannot be an employer-employee relationship surviving after the employee retires from service. Therefore, continuing the enquiry proceedings or conducting an action against the person after his retirement from service cannot be sustained in the eye of law.

7.1. Our view is also supported with the following decisions.

7.2. While dealing with the effect of continuance of disciplinary proceedings after superannuation in the absence of specific provisions, the Apex Court in Bhagirathi Jena v. Board of Directors, O.S.F.C. (1999) 3 SCC 666, held as under:

> " 7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could

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be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

7.3. A Division Bench of this Court in State of Tamil Nadu v. R. Karuppiah, (2005) 2 MLJ 555, also held as under:

"29. From the above note it is also clear that to proceed against a Government servant, who is under suspension on a charge of misconduct, after his retirement, the fulfilling of the requirements under Rule 56(1)(c) of the Fundamental Rules is a mandatory one, otherwise, the competent authority cannot have any jurisdiction on the retired Government servant to proceed against him and the non-compliance of the said rule has vitiated all the proceedings initiated against the first respondent and therefore, the same are not sustainable under law and are liable to be set aside."

7.4. Again a Division Bench of this Court in P. Muthusamy v. Tamil Nadu Cements Corporation Ltd., (2006) 4 MLJ 504, wherein taking note of the service rules of Tamil Nadu Cements Corporation Limited, it was held that retiring a person with liberty to continue disciplinary proceeding, after superannuation, is illegal and without jurisdiction, in the absence of such a provision in the service rules.

8. In view of the admitted factual position in the case on hand that there is no specific enabling provision in the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder and legal position as referred to above, we hold that the order of the first respondent, reserving the right to continue the disciplinary proceedings after superannuation, is illegal and without jurisdiction.

Resultantly, we allow the appeal, the order of the learned Single Judge is set aside and all the proceedings initiated against the appellant based on the observation made in the order permitting him to retire dated

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9.1.1998, viz., without prejudice to the disposal of the charges pending against him, are quashed as the same are passed without any authority of law and jurisdiction. No costs.

sasi

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Managing Director,
   Coimbatore District
   Co-op. Milk Producers' Union Ltd.
   Pachapalayam, Perur Via
   Coimbatore – 10

2. The Enquiry Officer
   Domestic Enquiry
   The Coimbatore District
   Co-op. Milk Producers' Union Ltd.
   Pachapalayam, Perur Via
   Coimbatore – 10

+ One cc to Mr. R. Krishnasamy, advocate sR 54147
+ One cc to mr. P. Narayanamoorthy, Advocate sR 52710

VRK (co)
sg 21/9/07

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